THE UNIVERSITY OF
WARWICK

April 28, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Communication in MB Docket No. 10-56

Dear Ms. Dortch:

On April 26, 2010, I spoke by telephone with Rebekah Goodheart, Jamila-Bess Johnson, Deborah Broderson, William Lake, and Danny Bring of the Media Bureau; Jim Bird and Joel Rabinovitz of the Office of General Counsel; Paul Lafontaine of the Office of Strategic Planning and Policy Analysis; Stacy Jordan and Erin McGrath of the Wireless Telecommunications Bureau; and Donald Stockdale of the Wireline Competition Bureau. The discussion focused on my recent research interests and the Commission's review of the proposed joint venture between Comcast Corporation and NBC Universal, Inc.

I noted that I have been hired by a cable channel operator unaffiliated with the merging parties to assist with their economic analysis of the Comcast-NBCU transaction, although I was here presenting my prior research results which did not include data specifically related to the Comcast-NBCU transaction. I then discussed my prior research regarding measuring foreclosure incentives in television markets. The conversation focused on the extent to which vertically integrated MVPDs favor their own programs and/or discriminate against (exclude) unaffiliated programs.

I explained the difference between downstream foreclosure (vertically affiliated channel-MVPDs restricting access or raising prices for affiliated upstream content to rival downstream MVPDs) and upstream foreclosure (vertically-affiliated channel-MVPDs refusing to carry or lowering the price paid by affiliated downstream MVPDs for rival upstream content) and then described the data I have been using to explore these questions. I also mentioned that the research I and several co-authors are conducting is also concerned with horizontal foreclosure upstream due to the bundling or tying of channels by owners of large channel families.

I explained that my research looks at the top 50-60 non-broadcast channels using channel carriage and lineup data from both Warren Publishing's Television and Cable Factbook and Tribune Media Services (TMS). Most of the results I discussed on the telephone related to the TMS data, although patterns were broadly similar using the Factbook data.

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To explore the possibility of downstream foreclosure, I explained that we examined the patterns of carriage of certain regional sports networks that weren't required to be offered under the Commission's program access rules. We found that there was strong evidence both of carriage favoritism – the integrated MVPD always carried the content – as well as carriage exclusion – unintegrated rivals almost always did not carry the content.

With respect to upstream foreclosure, I explained the difference between complete exclusion, where the MVPD does not carry a channel, and partial exclusion, where an MVPD places a rival channel on an unattractive tier or channel position. I explained that my explorations of the data have examined both complete and partial exclusion. I explained that our preliminary explorations divided channels into channel families (*e.g.,* cartoon channels, women's channels, shopping channels, classic movie channels, etc.) and looked at the carriage and placement of each channel within those families in each major MVPD's channel lineup.

I didn't say this at the time, but the cleanest measure of foreclosure incentives would be to analyze the incentives to foreclose truly independent channels, as both channel bundling and reciprocity between large channel owners and distributors could otherwise soften the incentive and/or ability to foreclose. As shown in my attached slides at 19-22, however, the small number of independent channels prevents an analysis focused only on those.

Despite this, we found evidence of both carriage favoritism and carriage exclusion. This is true both for carriage (e.g., Cablevision simply does not carry some women's networks that compete with their affiliated WE channel) as well as tiering and channel position (e.g. the average channel position for WE on Cablevision is 42, adjacent to market leader Lifetime, and distant from their rival Oxygen; for any other MVPD WE's average channel position is over 100).

I next provided an overview of a model that my co-authors and I are just beginning to develop which is designed to calculate the profitability of alternative foreclosure strategies based on estimates of demand, costs, and competitive conditions in the industry. This model is an extension of a similar model one of the co-authors and I are trying to finalize to evaluate the potential for a la carte pricing of individual cable channels.

I described how one can try to measure the costs and benefits of foreclosure in a manner analogous to that used by the Commission in the News-Hughes transaction. With respect to upstream foreclosure, I described the costs as the lost revenue from subscribers that switch away from a distributor because they don't carry the foreclosed content. I described the benefits as the increase in advertising and subscription fee revenue that would accrue to the affiliated channel due to increased viewing of the affiliated channel (both on the foreclosing distributor as well as on other distributors if the foreclosed channel is weakened), increased advertising rates to the affiliated channel due to a weakening of the foreclosed channel in the advertising market, and an improved bargaining position of the affiliated channel due to a weakening of the foreclosed channel in the affiliation market. I emphasized the importance of the advertising revenue effects, noting that even in the absence of an increase in advertising rates for the affiliated channel, it would still earn additional revenues due to a likely increase in viewership. I further described how our model could be used to estimate some of the important elements that would feed into the these costs and benefits, giving as an example that we are able to use our model to calculate the share of households that might switch providers if they could not access particular content from a particular distributor.

I hypothesized that a similar model could be developed to calculate the costs and benefits of the foreclosure for Internet video channels.

I also discussed some of the differences in the carriage regulations used to address foreclosure and discrimination used by OfCom (the United Kingdom's regulatory body for telecommunications) and the program access rules used by the FCC.

I attach slides from a presentation I made last November regarding my research on foreclosure.

Sincerely,

Gregory S. Crawford, Ph.D.